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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,618	03/02/2004	Sherman Fong	P1192-2C1	4005

9157 7590 05/23/2005

GENENTECH, INC.  
1 DNA WAY  
SOUTH SAN FRANCISCO, CA 94080

EXAMINER

DEBERRY, REGINA M

ART UNIT PAPER NUMBER

1647

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding..

<b>Office Action Summary</b>	Application No. 10/791,618	Applicant(s) FONG ET AL	
	Examiner Regina M. DeBerry	Art Unit 1647	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 11-18 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 11, drawn to a method of enhancing the proliferation of immune cells comprising contacting said immune cells with an effective amount of a Bolekine polypeptide, classified in class 435, subclass 7.8.
- II. Claims 12-13, drawn to a method of enhancing the infiltration of immune cells in a mammal comprising administering an effective amount of a Bolekine polypeptide, classified in class 514, subclass 2.
- III. Claims 14, drawn to a method of alleviating infection in a mammal comprising administering an effective amount of a Bolekine polypeptide, classified in class 514, subclass 2.
- IV. Claims 15-16, drawn to a method of alleviating an immune related disorder in a mammal in need thereof comprising administering an effective amount of a Bolekine polypeptide, classified in class 514, subclass 2.
- V. Claim 17, drawn to a method of inhibiting the proliferation of T-lymphocytes comprising contacting T-lymphocytes with an effective amount of an antagonist of a Bolekine polypeptide, classified in class 435, subclass 7.8.

- VI. Claim 18, drawn to a method of diagnosing an immune related disease in a mammal, comprising detecting the level of expression of a gene encoding Bolekine polypeptide in a test sample, classified in class 435, subclass 6.

**Inventions I-VI are unrelated methods.** Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). The instant specification does not disclose that these methods would be used together. A method of enhancing the proliferation of immune cells, a method of enhancing the infiltration of immune cells in a mammal, a method of alleviating infection in a mammal, a method of alleviating an immune related disorder in a mammal, a method of inhibiting the proliferation of T-lymphocytes and a method of diagnosing an immune related disease in a mammal are all unrelated as they comprise distinct steps, which demonstrates that each method has a different mode of operation. Each invention performs this function using a structurally and functionally divergent material (T-lymphocytes, eosinophils, administration to patient, etc). Moreover, the methodology and materials necessary for the methods differ significantly. For example, the treatment of an immune related disorder using the Bolekine polypeptide; the polypeptide is administered to a patient having the disorder using any mode of administration. For diagnosing an immune related disease in a mammal, the level of expression of a gene encoding Bolekine polypeptide in samples is examined. For inhibition of the proliferation of T-lymphocytes, a Bolekine polypeptide antagonist is employed.

Therefore, each method is divergent in materials and steps. For these reasons the Inventions I-VI are patentably distinct.

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, and the search required for each group is not required for the other groups because each group requires a different non-patent literature search due to each group comprising different products and/or method steps and/or is recognized divergent subject matter, restriction for examination purposes as indicated is proper.

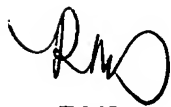
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

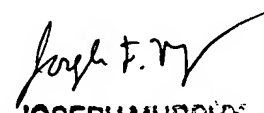
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina M. DeBerry whose telephone number is (571) 272-0882. The examiner can normally be reached on 9:00 a.m.-6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda G. Brumback can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RMD  
5/16/05



JOSEPH MURPHY  
PATENT EXAMINER